

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Petitioner,

v.

HERITAGE HOUSE, INC., a Tennessee
corporation

Respondent.

ASSURANCE OF VOLUNTARY COMPLIANCE

THIS ASSURANCE OF VOLUNTARY COMPLIANCE is given by HERITAGE HOUSE, INC., a Tennessee corporation of Nashville, Tennessee, to PAUL G. SUMMERS, Attorney General and Reporter for the State of Tennessee ("Attorney General") and MARK WILLIAMS, the Director of the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance ("Division").

WITNESSETH:

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division and the Attorney General conducted an investigation of specific business practices of Respondent. These practices include Heritage House, Inc. providing "certificates of authenticity" to consumers in conjunction with the purchase of certain speciality items such as music boxes. Some of these "certificates of authenticity" include a silver embossed notary seal containing the following: "Gordon Denney," "Notary Public at Large," and "State of Tennessee." The certificates are not in fact notarized in accordance with legally accepted standards. For example, Gordon Denney was never a notary public at large commissioned by the State of Tennessee, the document is merely a photocopy of

the president's signature, each certificate has not been logged into a notary log and the notary's commission expiration date is not provided. Respondent's business practices are more fully described in the State's Petition. As a result of the investigation, the Division and the Attorney General determined that certain acts and practices of Respondent violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.* (the "Act").

B. Respondent denies any wrongdoing. Further, pursuant to Tenn. Code Ann. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of a prior violation of the Act. Respondent has fully cooperated with the Attorney General's investigation.

C. Therefore, pursuant to Tenn. Code Ann. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to Tenn. Code Ann. § 47-18-107, Respondent gives, and the Attorney General accepts, the following assurances:

I. DEFINITIONS

As used in this Assurance and accompanying Agreed Order, the following words or terms shall have the following meanings:

1.1 "Assurance of Voluntary Compliance" or "Assurance" shall refer to this document entitled Assurance of Voluntary Compliance in the matter of *State of Tennessee v. Heritage House, Inc., a Tennessee corporation*.

1.2 "Consumer" means any person, a natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.

1.3 "Division" or "Division of Consumer Affairs" shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.

1.4 "Respondent" shall refer to Heritage House, Inc. and/or any and all officers, owners, employees, agents and representatives of Heritage House, Inc.

1.5 "Petitioner," "State of Tennessee," or "Attorney General" shall refer to the Tennessee Attorney General & Reporter and the Office of the Tennessee Attorney General.

1.6 "Tennessee Consumer Protection Act" or "Consumer Act" shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq.*

II. JURISDICTION

2.1 Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and Agreed Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and reasonable attorneys' fees and any costs associated with any successful petitions to enforce any provision of this Assurance and Agreed Order against Respondent.

III. VENUE

3.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Chancery Court of Davidson County, Tennessee.

IV. PERMANENT INJUNCTION

Accordingly, it is hereby agreed that upon approval of the Court, Respondent shall be permanently and forever enjoined and bound from directly or indirectly engaging in the practices set forth herein.

4.1 Respondent shall be prohibited from directly or indirectly, representing to any consumer that a particular person is a "notary" or "notary public at large," if such is not the case.

4.2 Respondent shall be prohibited from directly or indirectly, representing to any consumer that any merchandise or document has been approved or authorized by the State of Tennessee, unless such is the case.

4.3 Respondent shall be prohibited from directly or indirectly, representing that any document has been notarized or attaching a notary seal, unless the document has in fact been notarized in compliance with all applicable statutes, rules and regulations.

4.4 Respondent shall be prohibited from directly or indirectly representing to any consumer that a signature has been notarized, when such is not the case.

4.5 Respondent shall be prohibited from sending to consumers any certificates of authenticity containing the notary seal bearing Gordon Denney's name or any other notary seals that are not used in compliance with all applicable statutes, rules and regulations.

4.6 Without limiting the scope of paragraph 4.4 above, Respondent shall not provide to consumers certificates of authenticity (or other similar documents) that include notarized signatures unless, at a minimum, the following requirements are satisfied: (a) the notary's commission was in effect at the time the certificate was notarized, (b) the notary was present and observed the certificate being executed, (c)

the notary personally knew the person executing the document or obtained and recorded information confirming that person's identity, (d) the notary signed the document indicating he/she is a notary, (e) the notary indicated the date that the notary's commission expires on the certificate, and (f) the notary maintains a log of all items notarized by the notary and the date each such item was notarized.

V. RESTITUTION

5.1 Respondent represents and warrants that no consumers have complained to Respondent about the certificates of authenticity and the issues associated with the notary and notarization of those certificates. Respondent understands that the State expressly relies upon this representation; if it is false, misleading, deceptive or unfair in any way, the State may move to set aside this Assurance or request that the Respondent be held in contempt.

5.2 Respondent agrees that any consumer who comes forward complaining about the issues set forth in paragraph A of the witnesseth section shall be permitted to return any such item that was purchased and included a "certificate of authenticity" for a full refund, if the consumer so elects. Respondent agrees to notify the Division of Consumer Affairs in writing within ten days of issuing a refund under this section. The notification shall include the name, address and amount refunded to each such consumer.

VI. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE

6.1 Respondent shall pay the sum of Two Thousand Five Hundred and 00/100 Dollars (\$ 2,500.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Attorney General" on the day of execution of this Assurance.

VII. PAYMENT TO THE GENERAL FUND

7.1 Respondent shall pay the sum of Three Thousand Five Hundred and 00/100 Dollars (\$3,500.00) to the State of Tennessee as a payment to the General Fund. This payment shall be made by a cashier's or certified check payable to the "State of Tennessee- General Fund" on the date of execution of this Assurance.

VIII. MONITORING AND COMPLIANCE

8.1 Upon request, Respondent agrees to provide books, records and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Assurance. Respondent shall make any requested information available within one (1) week of the request, at the Office of the Attorney General, Nashville, Tennessee or at any other location within the State of Tennessee that is mutually agreeable in writing to Respondent and the

Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

8.2 The State of Tennessee has the right to test shop for the purpose of confirming compliance with this Assurance and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Respondent. Further, the State of Tennessee may record any or all aspects of its communications or contacts with the Respondent in audio or video form without notice to Respondent.

IX. PRIVATE RIGHT OF ACTION

9.1 Pursuant to Tenn. Code Ann. § 47-18-109, nothing in this Assurance shall be construed to affect any private right of action that a consumer/person may hold against Respondent.

X. PENALTY FOR FAILURE TO COMPLY

10.1 Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

10.2 Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties. Respondent agrees to pay all court costs and attorneys' fees associated with any successful petitions to enforce this Assurance and Order against the Respondent.

XI. REPRESENTATIONS AND WARRANTIES

11.1 The Respondent acknowledges that it is obligated to fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 et seq., including, but not limited to Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(12) and (b)(27), which prohibit any and all unfair, misleading and/or deceptive acts or practices.

11.2 Respondent represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondent agrees that the Assurance and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to it by the State of Tennessee, its attorney or any employee of the Attorney General's Office or the Division of Consumer Affairs to procure this Assurance.

11.3 Respondent represents that signatories to this Assurance have authority to act for and bind the

Respondent.

11.4 Respondent will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

11.5 Neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.

11.6 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

11.7 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each appropriate person responsible to ensure compliance with this Assurance who acts directly or indirectly on behalf of the Respondent who are involved in conducting business in the State of Tennessee. Within forty-five (45) days of entry of this Assurance, Respondent shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Assurance.

11.8 Respondent warrants and represents that it is the proper party to this Assurance and Order. Respondent further acknowledges that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

11.9 Heritage House, Inc. represents that it is the true legal name of the entity entering into this Assurance of Voluntary Compliance and Agreed Order. Respondent understands that the State expressly relies upon this representation and if this representation is false, unfair, deceptive, inaccurate or misleading, the State shall have the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

11.10 This Assurance and Agreed Order may only be enforced by the parties hereto.

11.11 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

11.12 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

11.13 This Assurance and Agreed Order constitutes the complete agreement of the parties with regard to

the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition.

11.14 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State or other governmental entity from enforcing laws, regulations or rules against Respondent.

11.15 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

XII. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES

12.1 Nothing in this Assurance and Order shall be construed as relieving Respondent of the obligation to comply with all state or federal laws, regulations or rules.

XIII. FILING OF ASSURANCE

13.1 Upon the execution of this Assurance, the Attorney General shall prepare and file in the Chancery Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all court costs of filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondent agrees that it consents to the entry of this Assurance and Agreed Order without further notice.

XIV. NOTIFICATION TO STATE

14.1 Any notices required to be sent by this Assurance shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:

Carolyn Smith

Assistant Attorney General

Office of the Attorney General

Consumer Protection Division

For the Respondent:

Thomas C. Harvey, Jr.

Heritage House, Inc.

2451 Atrium Way

Nashville, Tennessee 37214, or

425 Fifth Avenue North, 2nd Floor
Nashville, Tennessee 37243
(615) 532-1978

P. O. Box 305140
Nashville, Tennessee 37230-5140
(615) 391-2608

XV. COURT COSTS

15.1 All court costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.